

HOOPER & WILLIAMS, LIVINGSTON, KINCAID & CO.,
GILBERT & GERRISH, AND OTHERS.

[To accompany Bill H. R. No. 720.]

MAY 18, 1860.

Mr. WALTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the memorial of H. S. Eldredge and Gilbert & Gerrish, and others, have considered the same, and report:

That Joseph P. Heywood was appointed marshal of the Territory of Utah in 1851, and reappointed February 28, 1855; and during the whole of the first term, and until April 14, 1855, the Secretary of the Interior suffered him to raise money for judicial expenses by drafts drawn on the Secretary of the Treasury, which were cashed by the merchants in Utah, and forwarded to their correspondents in the eastern States for collection. These drafts, including one drawn as late as June 22, 1855, were all paid at the treasury.

On the 14th of April, 1855, the Secretary of the Interior wrote to the marshal as follows: "From this correspondence, [in respect to Heywood's drafts, which had been refused payment,] you will perceive what are the views of the department as respects the practice into which you have fallen, and to which you exclusively adhere, of drawing upon the treasury of the United States. The practice is contrary to instructions, and must be entirely discontinued for the future. *You will therefore be pleased, in all cases hereafter, to give timely notice of the wants of your office, in order that the amount of funds required by you may be remitted to you direct, or, should you prefer it, placed to your credit with the depositary at St. Louis or New York, subject to your order.*"

In compliance with these instructions, the marshal *did* make a requisition for the necessary funds August 1, 1855, and this requisition was filed in the department here on the 11th of September following. Allowing the same time for a reply or remittance, the marshal should have received it on the 21st of October following. He received neither the reply nor remittance. Funds were necessary, and he could get them only by drafts, relying upon the Secretary to deposit money "subject to his order." On the 31st of October he gave drafts to the amount of \$10,000, which are the first embraced in

the claim before us. He waited four months longer for advices from the Secretary, and having received none, he then (February 26, 1856,) gave drafts for over \$13,000; and from time to time, up to July 12, 1856, gave drafts and certificates to the amount of \$82,753 58—all for judicial expenses. Of this sum, \$81,753 58 was advanced by the present claimants.

On the settlement of the marshal's accounts, accruing previous to September term, 1855, the marshal was indebted to the department in the sum of \$18,588 30; that is, for the time when he was suffered to draw drafts on the treasury, and when the drafts were all paid at the treasury, although, as the Secretary of the Interior observes, the practice was "contrary to instructions." On the settlement of subsequent accounts, when the marshal had raised the money of the memorialists on drafts and certificates issued *after* the Secretary had required requisitions and promised to furnish funds or to deposit to the marshal's credit in the usual form, it was found that the government was indebted to the marshal in the sum of \$43,946 60. From this sum the department deducted first \$18,588 30, to make good the deficiency in the first accounts; thus, in fact, taking the money of the memorialists, instead of prosecuting the marshal's bond, to make good a deficiency which arose out of the confessed irregularity, both of the department and the marshal. Other deductions were also made, doubtless properly, and \$23,913 30 was finally applied, *pro rata*, towards payment of the marshal's drafts and certificates cashed by the memorialists. This payment was made on a surrender of all the drafts and certificates on a condition stated by the Secretary of the Interior, February 24, 1858, to wit: "in full satisfaction of said drafts and certificates, unless additional credits should hereafter be allowed, [to the marshal,] in which case they [the memorialists] will claim the amount thereof until the entire debt of Mr. Heywood is paid."

Heywood has been removed from office; but he has accounts still pending against the government to the amount of \$74,191 37, more than one-half of which (\$37,654 50) consists of "suspended claims," and the remainder (\$36,536 87) of items disallowed. Deducting from the \$81,753 58, advanced by the memorialists, the \$23,913 30 already paid by the government, there remains a balance of \$57,840 28, which constitutes the present claim. The memorialists ask an appropriation to that amount; and, if granted, it is obvious that it should be charged to Heywood's suspended account against the government.

The government is not bound by the irregular acts or neglects of its officers; and in this case relief must be granted, if granted at all, only because of its peculiar circumstances. For four years the executive departments tolerated an acknowledged irregularity in the marshal, which resulted in a loss to the memorialists of over \$18,000. Doubtless this course was permitted on account of the great distance of the Territories, and the difficulties and even dangers of making remittances. Doubtless for the same reasons in part, but perhaps also because of the balance against Heywood on his accounts for the first term, the Secretary of the Interior neglected either to remit funds to Heywood or to deposit in St. Louis or New York to his credit,

although he had informed Heywood that he would do so. The memorialists were entirely ignorant of any difficulty in Heywood's accounts. In fact, they were led by his reappointment to believe that his course had been entirely satisfactory, and the Secretary's letter of April 14, 1855, was apparently a guarantee for all advances they might make for necessary judicial expenses. It further appears that there was an imperative necessity for such advances, and to an extraordinary amount. All this is emphatically stated in a letter of Hon. J. F. Kinney, late chief justice in Utah, which is appended to this report. Judge Kinney states that, by reason of many murders, among them that of Captain Gunnison, there was a large amount of business in the courts, while the execution of process in the midst of hostile Indians required many men to aid the marshal. "*Without such advances,*" he says, "*the judicial wheels of the government would have been completely blocked.*" The memorialists frequently advised with him whether they would be safe in making these advances, and he "as often assured them that the government would certainly pay their demands without hesitation;" and that the reappointment of Heywood and the instructions to provide for money were additional reasons for the security held out to the merchants to make advances. The judge further says:

"I have looked over the petition of Messrs. Gilbert & Gerrish now pending, and I hesitate not to say that I believe their demand to be just, and ought to be paid without further delay. These advances were made upon the faith of the government for government expenses incurred by the courts, and in many instances advised by the judges. The marshal having no funds of the government, I regard it exceedingly unjust to delay payment."

Under these circumstances, the committee are agreed in the opinion that both equity and sound policy commend this claim to the favorable consideration of Congress, and they report the accompanying bill.

WASHINGTON CITY, D. C.,
May 21, 1858.

SIR: At your request I make the following statement of fact relative to my knowledge of the demand of Messrs. Gilbert & Gerrish, now pending before your committee.

In the spring of 1854 I accepted the appointment of chief justice of Utah Territory, and crossed the plains. In entering upon my official duties I found considerable business pending in court, which soon accumulated until before I left; I was occupied about four weeks at a single term in Salt Lake City. A number of important criminal cases were tried before my court. One of the most important, the indictment against the murderers of Captain Gunnison and his party; one of Carlos Muny for the murder of an Indian, together with other indictments against Indians wherein some seven whites had been murdered during the winter of 1855 and 1856 in the suburban portion

of Utah valley, bordering Utah lake on the west. In one instance, wherein two whites and three Indians were killed in making arrests; these were United States cases. The business of the courts, pay of witnesses, grand and petit juries, and officers, involved a large expenditure of money.

Out of the settlements the country was in the hands of Indians, some of whom were hostile, and in many instances requiring a strong force to serve process and secure arrest. Particularly was this the case in serving writs against Indians, some of whom were indicted for murder, stealing, driving off cattle and horses—some six hundred having been driven off at one time in December, 1855, or January, 1856.

Muny, who was indicted for killing an Indian, had the reputation of being a most dangerous and desperate man. He had joined a band of Indians, marauders on the Humboldt, occupying a portion of country contiguous to the great thoroughfare leading to California, and who, the Indian agent, Garland Hunt, informed me, was depredating upon the emigrants and inciting the Indians to acts of hostility. I instructed the marshal to take with him, at any reasonable expense, a sufficient posse to secure his arrest, and bring this notorious offender to justice. He accordingly summoned a posse of forty men, who went about four hundred miles, arrested, and brought this man to trial. He had previously been in fellowship with the Mormon church, and although the proof of his guilt was conclusive, through some mysterious influence he was acquitted by a Mormon jury. The expenses of all these courts in my district, as well as those of my brother judges, were paid, to a great extent, by Gilbert & Gerrish and other merchants in Salt Lake City, by advances to the marshal in behalf of the government, and receiving in return his drafts on the United States treasury. Without such advances the judicial wheels of the government would have been completely blocked. They frequently advised with me whether they would be safe in doing so, and I as often assured them that the government would certainly pay their demands without hesitation, believing, as I did, after the reappointment of the marshal in 1855, that the marshal had the confidence of the government, and that his accounts had been satisfactorily adjusted with the proper department.

According to my recollection, the marshal had been instructed, at the time of his reappointment, to provide himself with means for court expenses. True it is, he called on me to assist in making up the probable estimates of the court, and these estimates formed the basis of his requisitions, which was regarded as sufficient authority to advise advances to be made on the part of the merchants.

His reappointment, and instruction to provide for money, was an additional reason for the security held out to the merchants to make advances.

I have looked over the petition of Messrs. Gilbert & Gerrish, now pending, and I hesitate not to say that I believe their demand to be just, and ought to be paid without further delay. These advances were made upon the faith of the government for government expenses

incurred by the courts, and in many instances advised by the judges. The marshal having no funds of the government I regard it exceedingly unjust to delay payment.

I desire further to state that I have not the slightest interest in the result of their application, nor am I induced to make this statement for any reason except as a matter of duty, and in sheer justice to the parties.

Very truly, yours, &c.,

J. F. KINNEY,
Late Chief Justice of Utah.

Hon. S. S. MARSHALL.

